

## **SWIFT WINDFARM COMPLAINT**

### **Narrative of the case against RBC**

- [IR 281] says: *"I find that the degree of harm to landscape, visual amenity and heritage interests is considerably greater than the ... Council acknowledge."*
- That vindicates the CPC/ASWAR opposition case and condemns the RBC case. How did this come about? Here is a suggestion.
- In the 9 turbine scheme report to Committee there were several references that the scheme would or could have been acceptable if it had only been 3 or 4 turbines.
- Those were gratuitous remarks and irrelevant to the decision on the application, but they clearly demonstrate a prejudgement of any future application for 4 turbines.
- When a 4-turbine scheme was applied for, no serious examination of its LVIA was made, as alleged by us and as proven at the Inquiry.
- Nor was heritage properly assessed for the 4 turbine scheme. Lowde stated that he was not aware of *Barnwell*, but we had sent him the decision a month earlier and its relevance had been pointed out to him.
- When Lowde sent a draft of his Report to Committee, if there was any process of reviewing it by senior officers then they must (had they been doing their job) have realised that neither LVIA nor Heritage had been properly addressed. Nonetheless, they allowed it to go forward to Committee.
- In its Proof to the Public Inquiry, CPC expressed astonishment that Collett's consideration of the LVIA was effectively nil. Indeed, his brief email expressly shows how influenced he was by his prejudgement (*"this greatly reduced number of proposed turbines (from the previous application) will not have such significant consequences.."*) and makes equally clear that he had not considered the actual 4 turbine application properly.
- RBC's response was to hire a barrister to attack CPC/ASWAR and (allegedly) to protect Collett, even though they must have known our criticism was correct.
- The barrister was hired at a cost to the public purse of some £20k, without any authority other than Rob Back's own "authority".
- That RBC knew Collett had not conducted a thorough appraisal of the application is demonstrated by their barrister's approach at the Inquiry. He could have taken one of two lines of examination:
  - a) He could have produced documentary evidence showing we were wrong; or
  - b) He could have called Collett to the witness stand to explain what he had actually done.

- He did neither, thereby confirming that there was no documentary evidence and that, if cross-examined, Collett would have had to admit his neglect. Instead, he took the only other way out: to argue that Collett was a professional and therefore he must have behaved professionally – a proposition lacking any evidence or indeed logic whatever.
- The barrister took (or tried to take) a similar approach on heritage but that was foiled by Lowde's own admission (albeit incorrect) that he was unaware of *Barnwell* [IR 281]. He had been made aware of *Barnwell*, a month before the Planning Committee met, but either ignored it or failed to understand it.
- RBC made further serious errors. Whether on legal advice or otherwise, it was decided that, if the only reason for refusal (NATS) had fallen away, RBC could not remain neutral, but had to support the appeal, and moreover actively support it. That was a proposition lacking any basis in law.
- RBC therefore actively supported RES, although the only Committee resolution was to object. Ample time was available to seek a Committee resolution for a change of course; no such resolution was sought and indeed Councillors were not informed of the change of tack. Nor was CPC or ASWAR.
- This must have been an extremely late change of tack. In Lowde's Proof he stated: "*Accordingly this reason for refusal has now been overcome and the Council will not be offering any evidence in support of the reason for refusal and will not be opposing the appeal.*" That is a long way from active support.
- During the Inquiry, RBC's barrister stated: "*RBC is not neutral, that is not an option, must determine application in accordance with law and policy. When recovered by SoS, we have a duty to explain why we reached the decision we did, it would be wrong to turn up and pretend we were neutral.*" That, again, is a very long way from active support (and also legal rubbish).
- This unauthorised support for RES, made by a barrister employed using unauthorised public funds, took the form of attacking the credibility of ASWAR and CPC witnesses: for example, Dr Down for giving planning evidence when he was not MRTPI; and Mrs Down for being MRTPI but giving heritage evidence. While this eventually backfired spectacularly, it was a typical "barrister's trick" – a way of trying to smear the witness rather than rebut the evidence – and ineffective, as the outcome has proved.
- No doubt those attacks were made on instructions from RBC? If not, what action is RBC taking against the barrister?
- The barrister made these ill-advised attacks while accompanied throughout by Lowde, whose qualification as MRTPI did not, it would seem, allow him to recognise that the second planning application was invalid. Not until he was backed into a corner on the matter by CPC/ASWAR was he forced to admit that the second application was indeed invalid.

- For reasons that remain unexplained, RBC throughout appeared hell-bent on trying to force through a grant of planning permission, and there are several residents who have their suspicions of that.
- However, RBC's position as now demonstrated is bad enough:
  - a) They failed properly to assess and determine a major planning application, due in part to having pre-judged it, and partly to serious professional failings
  - b) They fought a campaign of active support for RES without authority, backed only by a Committee resolution to refuse planning permission
  - c) They spent in the region of £20k on a barrister without any apparent authority and certainly no democratic authority
  - d) They either authorised attacks on witnesses, or have failed to require explanations from the barrister for making unauthorised attacks
  - e) They chose to actively support the appellant despite there being no legal obligation to do so
  - f) They failed to secure any Committee resolution to change their stance on the application: either to seek endorsement for supporting it; or to seek the Committee's view on the impact upon their original decision of the Written Ministerial Statement
  - g) They chose to attack both ASWAR and CPC, despite CPC being a part of the same local government structure as themselves and entitled to support rather than opposition, if anything, in the knowledge that their own LVIA and heritage appraisals were indeed deficient and the criticisms of the officers concerned were justified
  - h) In doing so, they caused the Churchover community and supporters to incur £10k on a barrister and many £ thousands of other expenditure and lost income over two years
  - i) By their astonishing professional incompetence in not recognising an invalid application, and then denying it when it was first pointed out to them, they added substantially to the work and worry endured by many villagers at a time when residents were already under the great stress of preparing for the Inquiry
  - j) These actions (deliberately or not) were concealed from the local Councillor
  - k) Many of these matters are likely to prove to be either maladministration or possibly illegal as the Local Government Ombudsman will decide.
- Put simply, a group of mostly lay residents has been forced, at the cost of their own time, effort, worry and expense, to rescue RBC from its own professional and organisational inadequacies. Far from RBC acting on behalf of its residents, it has actively fought against them.
- Additionally, RBC has on occasions added insult to injury. For example, when RBC invalidated the second application on 31 July 2015, RES

received a grovelling apology: *“On behalf of the Council I would like to offer my sincere apologies that this was not initially picked up during the validation process of the application, and this differs from the initial advice given on the 27<sup>th</sup> March 2015.”*

- CPC and ASWAR have received no thanks for saving RBC from a major error in law, and no apology.